

REPRESENTATIVE FOR PETITIONER:
Tracey Carboni, Baden Tax Management, LLC

REPRESENTATIVE FOR RESPONDENT:
Terrance F. Wozniak, St. Joseph Deputy County Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

PA Parts Manufacturing)	Petition No.: 71-011-02-1-4-00177
)	
)	Parcel No.: 06-1004-003402
Petitioner,)	
)	
v.)	
)	
)	County: St. Joseph
Harris Township Assessor,)	Township: Harris
)	
)	
Respondent.)	Assessment Year: 2002

Appeal from the Final Determination of
St. Joseph County Property Tax Assessment Board of Appeals

February 22, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The Petitioner contends that the subject property is overvalued and should be valued based on a “position statement” that the Petitioner submitted purporting to present a cost approach, an income approach and a sales comparison valuation for the property.

PROCEDURAL HISTORY

2. The Petitioner filed a Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) on January 14, 2004. On October 30, 2004, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination. On November 29, 2004, the Petitioner filed a Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 Petition) appealing the PTABOA’s determination. The Board has jurisdiction over the Petitioner’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On August 16, 2007, Jennifer Bippus, the Board’s duly designated Administrative Law Judge (“ALJ”), held a consolidated administrative hearing on the Petitioner’s Form 131 Petition.
4. Michael Gregorich, Harris Township Assessor, authorized the St. Joseph County PTABOA to represent Harris Township at the hearing. *See Bd. Ex. D.* Terrance Wozniak, St. Joseph Deputy County Attorney, appeared as counsel for the Respondent. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Tracey Carboni, Tax Representative

For the Respondent:

David Wesolowski, St. Joseph County Assessor
Dennis J. Dillman, PTABOA Member
Ross Portolese, PTABOA Member
Ralph Wolfe, PTABOA Member
Kevin Klaybor, PTABOA Member

5. The Petitioner submitted the following exhibits:
Petitioner Exhibit 1: Copy of the Position Statement prepared by Donald Feicht, Jr., Baden Tax Management, LLC
6. The Respondent did not provide any exhibits.
7. The Board recognizes the following additional items as part of the record of proceedings:
Board Exhibit A – The Form 131 Petition.
Board Exhibit B – Notices of hearing dated June 26, 2007.
Board Exhibit C – Hearing sign-in sheet.
Board Exhibit D – Notice of Representation from the Township Assessor.
8. The subject property is a light manufacturing facility located at 13085 Anderson Road, Granger, Indiana.
9. The ALJ did not inspect the subject property.
10. For 2002, the PTABOA determined the assessed value of the subject property to be \$328,100 for the land and \$4,759,900 for the improvements, for a total assessed value of \$5,088,000.
11. For 2002, the Petitioner requested that the property be assessed for \$328,100 for the land and \$3,580,200 for the improvements, for a total assessed value of \$3,908,300.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A Petitioner seeking review of a determination of the county Property Tax Assessment

Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

13. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
14. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PARTIES’ CONTENTIONS

Petitioner’s Contentions

15. The Petitioner contends that the Respondent incorrectly valued the property using the General Commercial Industrial schedule and a forty-year life expectancy table. *Carboni testimony; Pet’r Ex. 1, page 8*. The Petitioner argues that the 195,414 square foot building is a General Commercial Kit (GCK or kit) building and should be assessed accordingly. *Id.* at 10. The Petitioner argues that pre-engineered kit structures, like the improvements on the subject property, are generally characterized by the use of tapered steel rigid frames to form the sidewall and roof framing of the building. *Carboni testimony; Pet’r Ex. 1*. According to the Petitioner’s representative, the sub-framing of pre-engineered buildings generally consists of roll-formed steel purlins and girts from which the exterior roofing and siding is attached. *Id.* Kit structures also feature coated steel sheeting on the roof and sidewalls and a low rise roof generally with a roof pitch

ranging from 1” to 3” inches of rise for every 12 inches of roof. *Carboni testimony; Pet’r Ex. 1, pages 3, 4, 5, 6, 10, 11 & 23.*

16. The Petitioner argues that the property is over-valued based on an income approach to value. *Carboni testimony.* According to the Petitioner’s Exhibit, the “asking rent” on six “comparable” properties ranged from \$2.25 to \$3.84 per square foot. *Id.; Pet’r Ex. 1, page 9.* Adjusted to January 1, 1999, the asking rent for the properties ranged from \$1.72 to \$2.93 per square foot. *Id.* Mr. Feicht, who prepared the position statement, applied a capitalization rate of 0.1311 and a vacancy rate of 0.15 and determined that the subject property would require a rent of \$4.14 per square foot to support the assessment. *Id.*

17. The Petitioner further argues the property is over-valued based on the cost method of valuation. *Carboni testimony.* Petitioner’s Exhibit 1 estimated the replacement cost new for the property to be \$5,165,769 before depreciation using the base rates contained in the Guidelines. *Carboni testimony; Pet’r Ex. 1, page 26.* To determine the property’s depreciation, Mr. Feicht calculated the depreciation on four “comparable” properties. *Pet’r Ex. 1, page 30.* The first “comparable” property was a 4 year old industrial facility that Mr. Feicht determined had 64.9% depreciation, or 16.2% per year. *Id.* The second “comparable” property was a 15 year old property that the Petitioner’s representative determined had 48.4% depreciation, or 3.2% per year. *Id.* Mr. Feicht contends that the third property was 30 years old with 64.5% depreciation, or 2.2% per year, and the fourth property was 31 years old with 73.0% depreciation, or 2.4% per year. *Id.* Mr. Feicht drew a line between the properties’ annual depreciation rates of 2.2%, 2.4%, 3.2%, and 16.2%, and, based on that graph, contends that the subject property’s depreciation is 5% per year or 65%. *Id.* Applying this depreciation rate to its replacement cost new, Mr. Feicht estimated the property’s value to be \$2,671,000 or \$13.67 per square foot.¹ *Id.*

¹ According to the Petitioner’s representative, normal depreciation for a structure with an effective age of 13 is 37%. Therefore, Exhibit 1 contends that the property is suffering abnormal obsolescence and should be granted a 28% adjustment for that obsolescence. *Pet’r Ex. 1, page 31.* The Petitioner, however, presented no evidence regarding any purported causes for such depreciation.

18. The Petitioner's representative further argues that the actual cost per square foot for an addition to the building supports its cost approach value. *Carboni testimony*. According to Mr. Carboni, the Petitioner contracted for construction of a 40,000 square foot addition similar to the building in 2000. *Id.* The contract for construction included all labor and materials for the construction and included soft costs for engineering, local permits, supervision and public liability and worker's compensation insurance. *Carboni testimony; Pet'r Ex. 1 page 26 and McCollough Scholten Construction, Inc. Construction Cost and Invoices*. According to the Petitioner's representative, the addition cost \$478,877 or \$11.97 per square foot. *Id.* The Petitioner contends that this actual cost per square foot shows that its cost approach valuation is a good estimate of the property's value. *Id.*
19. Finally, the Petitioner contends the property is over-valued based on a sales comparison approach to valuation. *Carboni testimony*. In support of this contention, Exhibit 1 presents a "Sales Comparison Grid" identifying four sales that the Petitioner deemed comparable to the subject property. *Pet'r Ex. 1, page 34*. The "comparable" properties ranged in size from 163,080 to 250,000 and ranged in age from 4 to 31 years old. *Id.* The properties' wall heights ranged from 16 to 28 feet high and the properties' land to building ratios ranged from 3.35 to 6.11. *Id.* The sales occurred between September 1, 1995, and September 3, 2002, and Mr. Feicht applied an adjustment based on the consumer price index to trend the sale dates to January 1, 1999. *Id. at 35*. In addition, Mr. Feicht applied adjustment factors for age and wall height. *Id.* No other adjustments were deemed necessary. *Id.* The Petitioner's representative determined the adjusted price per square foot of the "comparable" properties to be \$13.81, \$1.93, \$12.63 and \$12.71 after adjustments of 173%, 174%, 186% and 151% respectively. *Pet'r Ex. 1, page 34*. Based on these "comparable" sales, Mr. Feicht determined the value of the subject property to be \$2,491,529 or \$12.75 per square foot. *Id.*
20. The Petitioner's representative determined a "reconciled" value of \$3,200,000 for the subject property. *Pet'r Ex. 1, page 46*. In reconciling the income approach, cost

approach and sales comparison value, Mr. Feicht gave no weight to the income approach. *Id.*

21. In response to questioning, Mr. Carboni admitted that Mr. Feicht prepared Exhibit 1, but was not a licensed Indiana appraiser. *Carboni testimony.* Mr. Carboni argued, however, that Exhibit 1 is not an appraisal so it was not required to comply with USPAP standards. *Id.*

Respondent's Contentions

22. The Respondent argues that the Petitioner's valuation should be given no weight. *Wosniak argument.* According to Mr. Wozniak, the Petitioner "cherry picked" data to support a low valuation. *Id.* Finally, the Respondent's counsel argued that the Board has previously rejected Mr. Carboni's cost analysis in *Bemis Brothers Bag Company v. Harris Twp. Assessor*, Petition No. 84-002-021301024 (May 10, 2007). *Id.*
23. The Respondent's witness, Mr. Dillman, argues that the position statement takes on the air of an appraisal but is not signed or certified and the procedures applied do not comply with USPAP standards. *Dillman testimony.* Mr. Dillman testified that, to develop an accurate sales comparison value of the property, an appraiser would have to consider location, condition and terms of the sale. *Dillman testimony.* According to Mr. Dillman, none of the data used by Mr. Feicht reflects sales or conditions in St. Joseph County. *Id.* Further, Mr. Feicht uses no location adjustment, no adjustment for terms and no limiting conditions. *Id.* Similarly, Mr. Dillman argues, the income approach is wholly unsupported. *Id.* Mr. Dillman concludes that the Petitioner's "position statement" is not prepared the way an appraisal should be prepared. *Id.*
24. The Respondent's witness also argued that Mr. Feicht was not an objective appraiser. *Dillman testimony.* According to Mr. Dillman, the Petitioner's tax representative receives compensation to obtain a lower value for the Petitioner's property. *Id.*

ANALYSIS

25. The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real property as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 Ind. Admin. Code 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally uses three methods to determine a property’s market value: the cost approach, the sales-comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Guidelines.
26. A property’s market value-in-use, as determined by applying the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. A professional appraisal prepared in conformance with the Manual’s definition of true tax value and the Uniform Standards of Professional Appraisal Practice (USPAP) generally will suffice. *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled using generally accepted appraisal principles. MANUAL at 5.
27. Here, the Petitioner relies upon its “position statement” estimating the subject property’s market value-in-use. While the position statement is presented with the air of an appraisal, it was prepared by an appraiser who is not licensed in Indiana and who did not sign or certify that his opinion complied with USPAP standards. Moreover, the appraiser failed to appear at hearing and testify in support of his opinion. Mr. Carboni presented the Exhibit as “our” opinion but, in response to questioning, admitted that all of the comparable sales, adjustments and depreciation were determined by Mr. Feichts. Thus,

the position statement and the opinions presented therein are hearsay statements that the Board gives little weight. *See* 52 IAC 2-7-2 and 52 IAC 2-7-3.

28. Further, while the Petitioner's position statement purports to determine the value of the subject property using the three generally accepted appraisal methods — the cost approach, the income approach and the sales-comparison approach, Mr. Feicht's analysis under each approach suffers from manifest problems that deprive his opinion of probative value. The Board explains those flaws in detail below.
29. The cost approach is based on the assumption that potential buyers will pay no more for a given property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute improvement. *MANUAL* at 13. The appraiser first calculates the existing improvement's replacement cost new. The appraiser next subtracts from that replacement cost new an amount reflecting the improvement's accrued depreciation. *Id.* Finally, the appraiser adds the value of the land, as if it were vacant, to determine the property's total value. *Id.*
30. Mr. Feicht first uses the Guidelines to calculate replacement cost new under the "kit" building model. Although labeled a "cost approach" valuation, Mr. Feicht merely applies a different model from the Guidelines. The Indiana Tax Court in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 764 (Ind. Tax Ct. 2006), however, found that it was insufficient to simply dispute the choice of model used by the Respondent in its assessment. A Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. *Id.* The Board is unconvinced that calling a recalculation of the Petitioner's mass-appraisal assessment a "cost approach" valuation is sufficient to overcome the Tax Court's ruling in *Eckerling*. *See also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006).
31. Next, Mr. Feicht purports to determine depreciation using a market extraction method. The analysis, however, lacks substance in several key respects. Mr. Feicht calculates

depreciation using four “comparable” properties. Mr. Feicht, however, does little to compare the four facilities to the subject property other than to assert that the properties were all used as light manufacturing. Even if the Petitioner’s representative had shown that the properties were comparable, the Board is not convinced by Mr. Feicht’s argument. Mr. Feicht argues that industrial properties depreciate “like a car.” Depreciation is steep in the early years and drops off in the later years. Mr. Feicht’s only support for this rate is a single 4 year old property that he deems to have 64.9% depreciation (or 16.2% per year). The other three properties that Mr. Feicht uses in his analysis have depreciation rates that he calculated to be 2.2%, 2.4% and 3.2%. For the Petitioner’s representative to sufficiently prove that depreciation decreases as a property ages, Mr. Feicht needed to include far more than four properties in his sample set and would have had to present a more complex statistical analysis than drawing a line between the four properties’ annual depreciation rates. The Petitioner’s depreciation analysis lacks probative value and we give it no weight.²

32. The Board next considers Mr. Feicht’s income approach to value. The income approach assumes that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable investment that offers the same risk and return as the subject property. MANUAL at 14. The income approach to value considers the subject property as an investment and therefore values the property based on the rent it will produce for its owner. *Id.*
33. Here, the Petitioner’s representative determined the rent, adjusted to January 1, 1999, on six “comparable” properties. Mr. Feicht then purported to perform an income approach valuation for the subject property. He applied a capitalization rate of 0.1311 and a

² The Petitioner also presented evidence of actual construction costs for an addition to the building made in February 2000. *Pet’r Ex. 1, McCollough Scholten Construction, Inc. Costs and Invoices*. We are similarly unpersuaded that the costs of building a 40,000 square foot addition to a facility are probative of the cost to construct a 195,414 square foot facility on raw land. For example, the cost to extend the existing electrical or plumbing service to an addition would differ significantly from the costs of bringing electrical service or plumbing to a new facility. Nor would there be any cost for providing access to the property for an addition as there would be for a new facility.

vacancy rate of 0.15 and determined that the subject property would require a rent of \$4.14 per square foot to support the assessment. The Respondent argues that the Petitioner failed to adequately support its calculations. Further, Mr. Dillman argues, the Petitioner failed to prepare or conclude its calculation in accordance with USPAP. We agree. Mr. Feicht did not provide any support for either the capitalization rate or the vacancy rate he used in his calculation. The Petitioner itself gave no weight to the income approach in its final determination of value. *Pet'r Ex. 1 at 46*. We likewise give no weight to this calculation. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000)(holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

34. Finally, the Board turns to Mr. Feicht's estimate under the sales-comparison approach. The sales-comparison approach assumes that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute improved property already existing in the market place. *MANUAL* at 13. The appraiser locates sales of comparable improved properties and adjusts their selling prices to reflect the subject property's total value. *Id.* The adjustments represent a quantification of property characteristics that cause sale prices to vary. *Id.* Using objectively verifiable evidence, the appraiser examines all possible differences between the subject property and the comparable properties and isolates the items that influence market value. *Id.* The appraiser quantifies those items' contributory values and uses those contributory values to adjust the comparable properties' sale prices. *Id.*

35. In order to use the sales-comparison-approach as evidence in an assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must compare the subject property's characteristics to the characteristics of the purportedly comparable properties. *Id.* at 471. And the proponent

must explain how any differences between the properties affect their relative market values-in-use. *Id.*

36. As is the case with his cost-approach and income approach analyses, Mr. Feicht's sales-comparison analysis similarly lacks substance. While Mr. Feicht provided more detail about how the four purportedly comparable properties in his sales-comparison analysis compared to the subject property than he did for any of the properties listed in his market-extraction analysis, his comparison was still largely conclusory. Mr. Feicht also failed to explain why he chose four properties located in Marion, Bluffton and Elkhart when the subject property is located in Granger, Indiana. In addition, the Petitioner's representative made only two adjustments: one for age and one for wall height. According to the Respondent's witness, who is a licensed Indiana appraiser, he would have adjusted for location, condition and terms of the sale. Further, while Mr. Feicht adjusted the purportedly comparable properties' sale prices to reflect differences in the wall height and the age of the properties, the method he used to make the adjustments was based on the Guidelines cost approach. The Petitioner presented no evidence that these cost-approach adjustments reflect how the market would value the differences in properties.
37. Mr. Feicht's assertions may not differ significantly from those made by a certified appraiser in an appraisal report. But the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with USPAP. Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Mr. Feicht, however, is not a licensed appraiser in Indiana. Further, he did not certify that the opinion he prepared for the Petitioner complied with USPAP in performing his valuation analysis. More importantly, Mr. Feicht's opinion was presented by Mr. Carboni who had no hand in preparing the analysis. The Board therefore will not simply defer to Mr. Feicht's "market

observations” as presented by Mr. Carboni without evidence showing the data upon which he grounded his observations.

SUMMARY OF FINAL DETERMINATION

38. The Petitioner failed to submit probative evidence to rebut the presumption that the subject property’s assessment is correct. The Board finds for the Respondent.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

-Appeal Rights –

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>.